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CIVIL AND POLITICAL RIGHTS, INCLUDING THE QUESTIONS OF: TORTURE AND DETENTION

Report of the Special Rapporteur, Sir Nigel Rodley, submitted pursuant to Commission on Human Rights resolution 2001/62

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Introduction

1. The mandate of the Special Rapporteur on torture, assigned since April 1993 to Sir Nigel Rodley (United Kingdom), was renewed for three more years by the Commission on Human Rights in its resolution 2001/62. In conformity with that resolution, the Special Rapporteur hereby submits his ninth report to the Commission. Chapter I deals with aspects of the mandate and methods of work. Chapter II summarizes his activities in 2000. A summary of communications sent by the Special Rapporteur from 15 December 2000 to 12 November 2001 (date of Sir Nigel's resignation from the mandate of Special Rapporteur on torture), as well as a summary of replies from Governments thereto from 15 December 2000 to 1 December 2001, may be found in addendum 1 to the present report.

2. In addition to the above-mentioned resolution, several other resolutions and decisions adopted by the Commission on Human Rights at its fifty-seventh session are also pertinent within the framework of the mandate and have been taken into consideration by the Special Rapporteur in examining and analysing the information brought to his attention. These resolutions are, in particular: 2001/39, "Independence and impartiality of the judiciary, jurors and assessors and the independence of lawyers"; 2001/40, "Question of arbitrary detention"; 2001/45, "Extrajudicial, summary or arbitrary executions"; 2001/46, "Question of enforced or involuntary disappearances"; 2001/47, "The right to freedom of opinion and expression"; 2001/49, "Elimination of violence against women"; 2001/54, "Internally displaced persons"; 2001/64, "Human rights defenders"; 2001/70, "Impunity"; and decision 2001/105, "Right to restitution, compensation and rehabilitation for victims of grave violations of human rights and fundamental freedoms".

I. MANDATE AND METHODS OF WORK

3. No mandate-related issues have arisen during the year under review. The methods of work of the Special Rapporteur have been those followed previously. In particular, he has continued to seek cooperation with holders of other Commission mandates to avoid duplication of activity in respect of country-specific initiatives. Thus, he has sent urgent appeals, transmitted information alleging violations within his mandate to Governments and sought missions to Member States in conjunction with the following mechanisms: the Working Group on Arbitrary Detention; the Special Rapporteurs on extrajudicial, summary or arbitrary executions; the independence of judges and lawyers; the promotion and protection of the right to freedom of opinion and expression; violence against women, its causes and consequences; and the situation of human rights in the Democratic Republic of the Congo; the Special Representative of the Commission on the situation of human rights in the Islamic Republic of Iran and the Special Representative of the Secretary-General on human rights defenders.

4. In paragraph 9 of its resolution 2001/62, the Commission on Human Rights invited the Special Rapporteur to study the situation of trade and production in equipment which is specifically designed to inflict torture or other cruel, inhuman or degrading treatment, its origin, destination and forms, with a view to finding the best ways to prohibit such trade and production and to combat its proliferation, and report thereon to the Commission on Human Rights. Accordingly, on 7 August 2001, a note verbale was sent to all Permanent Missions to the United Nations Office at Geneva, to international organizations, as well as relevant

intergovernmental and non-governmental organizations. At the time of writing, information and comments had been received by the Special Rapporteur from the Governments of Argentina, Bahrain, Belarus, Colombia and Tunisia, as well as the non-governmental organizations Amnesty International and the Omega Foundation. The Special Rapporteur believes that further information would be needed to allow his successor to carry out this study effectively.

II. ACTIVITIES OF THE SPECIAL RAPPORTEUR

5. The Commission, in its resolution 2001/62 (para. 38) requested the Special Rapporteur to present an interim report to the fifty-sixth session of the General Assembly at its fifty-sixth session on overall trends and developments with regard to his mandate and the Assembly, in its resolution 55/89 (para. 30), decided to consider it. Accordingly, he submitted his interim report (A/56/156) to the General Assembly under the agenda item entitled "Human rights questions". In that report, the Special Rapporteur addressed the following issues: intimidation as a form of torture; enforced or involuntary disappearance as a form of torture; torture and discrimination against sexual minorities; torture and impunity; and prevention and transparency. He also included a further revised version of the recommendations that had been included in his previous reports to the Commission on Human Rights. For ease of reference, these recommendations are annexed to the present report (annex I).

6. Regarding country visits, the Special Rapporteur regrets that the Government of China did not confirm the possibility of a visit in September 2001 as discussed with a delegation from the Permanent Mission of the People's Republic of China in June 2000. He would like to reiterate that he would have been happy to accept the February 1999 invitation by the Government of China to conduct a friendly visit to China, on the basis of modalities that would have ensured that the visit would have provided information capable of permitting him to make recommendations responding to the factual, institutional and legal obstacles to guaranteeing full respect for the prohibition of torture and other forms of ill-treatment falling within his mandate. Regarding the joint request with the Special Rapporteur on violence against women, its causes and consequences, to visit the Russian Federation with respect to the Republic of Chechnya (2000), the Special Rapporteur regrets that the Government did not agree to a joint mission this year despite the fact that he had been informed by a delegation from the Permanent Mission of the Russian Federation that such a visit could be envisaged at a later stage, once the security situation permitted. Regarding his request to visit Israel with respect to the occupied Palestinian territories, the Special Rapporteur reiterated his request to visit the country on the basis of the standard terms of reference for fact-finding missions. In particular, he inquired whether the non-cooperation of the Government of Israel on the basis of Commission resolution S-5/1 of 19 October 2000 would have precluded his access to the country and to all places of detention and interrogation chosen prior to and during the mission and confidential and unsupervised interviews with detained persons chosen by himself. At the time of writing of the present report, no reply had been received. Finally, the Special Rapporteur notes that the Permanent Representative of the Kingdom of Nepal to the United Nations Office at Geneva gave in April 2001 an initial positive reaction to the February 2001 Special Rapporteur's request to visit his country.

7. This year, the Special Rapporteur inquired whether the Government of Georgia would consider the possibility of inviting him to undertake a mission to the country. The Special Rapporteur appreciated the June 2001 invitation from the Minister of Justice and Human Rights and the Vice-Minister for Human Rights of Bolivia to visit their country. He regrets that other activities concerning his mandate did not allow him to undertake such a mission during his tenure.

8. The Special Rapporteur's requests to visit India (1993), Indonesia (1993), Egypt (1996), Algeria (1997), Tunisia (1998), Bahrain (1998) and Uzbekistan (2000 - joint request with the Chairman-Rapporteur of the Working Group on arbitrary detention) have not resulted in invitations.

9. On 15 and 16 February 2001, the Special Rapporteur addressed the open-ended working group on a draft optional protocol to the Convention against Torture of the Commission. From 18 to 22 June, he attended the annual meeting of the special rapporteurs/representatives. experts and chairpersons of working groups of the special procedures of the Commission. On 10 and 11 November, he participated in the Expert Seminar on the Definition of Torture organized by the Association for the Prevention of Torture in Geneva.

III. INFORMATION REVIEWED BY THE SPECIAL RAPPORTEUR WITH RESPECT TO VARIOUS COUNTRIES

10. During the period under review, the Special Rapporteur sent 114 letters to 73 countries on behalf of about 1,990 individuals and 33 groups involving about 6,000 persons, about 315 of whom were known to be women and 590 known to be minors. Together with individual cases, the Special Rapporteur also transmitted to Governments 22 allegations of a more general nature. The Special Rapporteur also sent 32 letters reminding the Governments of the following countries of a number of cases that had been transmitted in previous years: Armenia (1997), Cameroon (1998), Chad (1997 and 1999), China (1998), Côte d'Ivoire (1997), Djibouti (1999), Ecuador (1999), El Salvador (1996), Equatorial Guinea (1998), Eritrea (1999), Ethiopia (1997 and 1999), Haiti (1997 and 1999), Honduras (1998), India (1997, 1998 and 1999) Indonesia (1998 and 1999), Jamaica (1998), Libyan Arab Jamahiriya (1998), Malaysia (1999), Mali (1999), Morocco (1996), Myanmar (1996, 1997 and 1998), Nepal (1997, 1998 and 1999), Niger (1997), Nigeria (1998), Pakistan (1996, 1997, 1998 and 1999), Paraguay (1996), Peru (1998 and 1999), Philippines (1998), Russian Federation (1999), Uzbekistan (1996 and 1998), Venezuela (1997 and 1998) and Zimbabwe (1999), as well as the Palestinian Authority (1999). In addition, the Special Rapporteur sent 15 letters reminding Governments of a number of cases transmitted in 2000 with respect to which no reply had been received. The Special Rapporteur sent 186 urgent appeals to 58 Governments on behalf of about 581 individuals (of whom about 147 were known to be women and 12 to be minors) and 13 groups involving about 1,500 persons (of whom some 500 were known to be minors) with regard to whom fears that they might be subjected to torture and other forms of ill-treatment had been expressed. Thirty-seven Governments provided the Special Rapporteur with replies on some 800 cases submitted during the year under review, whereas 37 did so with respect to cases submitted in previous years.

Annex I

RECOMMENDATIONS OF THE SPECIAL RAPPORTEUR*

The Special Rapporteur included in his report to the Commission on Human Rights (see E/CN.4/2001/66) a revised version of the recommendations that he had compiled in 1994 (see E/CN.4/1995/34). As stated earlier, these recommendations may all be resolved into one global recommendation - an end to de facto or de jure impunity. He would like to encourage States to reflect upon them as a useful tool in efforts to combat torture. A further revised version of the recommendations follows:

(a) Countries that are not party to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment or the International Covenant on Civil and Political Rights should sign and ratify or accede to these Conventions. Torture should be designated and defined as a specific crime of the utmost gravity in national legislation. In countries where the law does not give the authorities jurisdiction to prosecute and punish torture, wherever the crime has been committed and whatever the nationality of the perpetrator or victim (universal jurisdiction), the enactment of such legislation should be made a priority;

(b) Countries should sign and ratify or accede to the Rome Statute of the International Criminal Court with a view to bringing to justice perpetrators of torture in the context of genocide, crimes against humanity and war crimes and at the same time ensure that their national courts also have jurisdiction over these crimes on the basis of universal jurisdiction;

(c) The highest authorities should publicly condemn torture in all its forms whenever it occurs. The highest authorities, in particular those responsible for law enforcement activities, should make public the fact that those in charge of places of detention at the time abuses are perpetrated will be held personally responsible for the abuses. In order to give effect to these recommendations, the authorities should, in particular, make unannounced visits to police stations, pre-trial detention facilities and penitentiaries known for the prevalence of such treatment. Public campaigns aimed at informing the civilian population at large of their rights with respect to arrest and detention, in particular to lodge complaints regarding treatment received at the hands of law enforcement officials, should be undertaken;

(d) Interrogation should take place only at official centres and the maintenance of secret places of detention should be abolished under law. It should be a punishable offence for any official to hold a person in a secret and/or unofficial place of detention. Any evidence obtained from a detainee in an unofficial place of detention and not confirmed by the detainee during interrogation at official locations should not be admitted as evidence in court. No statement of confession made by a person deprived of liberty, other than one made in the presence of a judge or a lawyer, should have a probative value in court, except as evidence against those who are accused of having obtained the confession by unlawful means. Serious consideration should be given to introducing video- and audio-taping of proceedings in interrogation rooms;

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* As found in A/56/156, para. 39.

(e) Regular inspection of places of detention, especially when carried out as part of a system of periodic visits, constitutes one of the most effective preventive measures against torture. Independent non-governmental organizations should be authorized to have full access to all places of detention, including police lock-ups, pre-trial detention centres, security service premises, administrative detention areas and prisons, with a view to monitoring the treatment of persons and their conditions of detention. When inspection occurs, members of the inspection team should be afforded an opportunity to speak privately with detainees. The team should also report publicly on its findings. In addition, official bodies should be set up to carry out inspections, such teams being composed of members of the judiciary, law enforcement officials, defence lawyers and physicians, as well as independent experts and other representatives of civil society. Ombudsmen and national or human rights institutions should be granted access to all places of detention with a view to monitoring the conditions of detention. When it so requests, the International Committee of the Red Cross should be granted access to places of detention;

(f) Torture is most frequently practised during incommunicado detention. Incommunicado detention should be made illegal, and persons held incommunicado should be released without delay. Information regarding the time and place of arrest as well as the identity of the law enforcement officials having carried out the arrest should be scrupulously recorded; similar information should also be recorded regarding the actual detention. Legal provisions should ensure that detainees are given access to legal counsel within 24 hours of detention. Security personnel who do not honour such provisions should be punished. In exceptional circumstances, under which it is contended that prompt contact with a detainee's lawyer might raise genuine security concerns and where restriction of such contact is judicially approved, it should at least be possible to allow a meeting with an independent lawyer, such as one recommended by a bar association. In all circumstances, a relative of the detainee should be informed of the arrest and place of detention within 18 hours. At the time of arrest, a person should undergo a medical inspection, and medical inspections should be repeated regularly and should be compulsory upon transfer to another place of detention. Each interrogation should be initiated with the identification of all persons present. All interrogation sessions should be recorded and preferably video-recorded, and the identity of all persons present should be included in the records. Evidence from non-recorded interrogations should be excluded from court proceedings. The practice of blindfolding and hooding often makes the prosecution of torture virtually impossible, as victims are rendered incapable of identifying their torturers. Thus, blindfolding or hooding should be forbidden. Those legally arrested should not be held in facilities under the control of their interrogators or investigators for more than the time required by law to obtain a judicial warrant of pre-trial detention which, in any case, should not exceed a period of 48 hours. They should accordingly be transferred to a pre-trial facility under a different authority at once, after which no further unsupervised contact with the interrogators or investigators should be permitted;

(g) Administrative detention often puts detainees beyond judicial control. Persons under administrative detention should be entitled to the same degree of protection as persons under criminal detention. At the same time, countries should consider abolishing, in accordance with relevant international standards, all forms of administrative detention;

(h) Provisions should give all detained persons the ability to challenge the lawfulness of the detention - e.g., through habeas corpus or amparo. Such procedures should function expeditiously;

(i) Countries should take effective measures to prevent prisoner-on-prisoner violence by investigating reports of such violence, prosecuting and punishing those responsible, and offering protective custody to vulnerable individuals, without marginalizing them from the prison population more than necessitated by the needs of protection and without rendering them at further risk of ill-treatment. Training programmes should be considered to sensitize prison officials as to the importance of taking effective steps to prevent and remedy prisoner-on-prisoner abuse and to provide them with the means to do so. In accordance with the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, [1] prisoners should be segregated along the lines of gender, age and seriousness of the crime, as well as first-time/repeat offenders and pre-trial/convicted detainees;

(j) When a detainee or relative or lawyer lodges a torture complaint, an inquiry should always take place and, unless the allegation is manifestly ill-founded, public officials involved should be suspended from their duties pending the outcome of the investigation and any subsequent legal or disciplinary proceedings. Where allegations of torture or other forms of ill-treatment are raised by a defendant during trial, the burden of proof should shift to the prosecution to prove beyond reasonable doubt that the confession was not obtained by unlawful means, including torture and similar ill-treatment. Serious consideration should also be given to the creation of witness protection programmes for witnesses to incidents of torture and similar ill-treatment which ought to extend fully to cover persons with a previous criminal record. In cases where current inmates are at risk, they ought to be transferred to another detention facility where special measures for their security should be taken. A complaint that is determined to be well founded should result in compensation to the victim or relatives. In all cases of death occurring in custody or shortly after release, an inquiry should be held by judicial or other impartial authorities. A person in respect of whom there is credible evidence of responsibility for torture or severe maltreatment should be tried and, if found guilty, punished. Legal provisions granting exemptions from criminal responsibility for torturers, such as amnesties, indemnity laws etc., should be abrogated. If torture has occurred in an official place of detention, the official in charge of that place should be disciplined or punished. Military tribunals should not be used to try persons accused of torture. Independent national authorities, such as a national commission or ombudsman with investigatory and/or prosecutorial powers, should be established to receive and to investigate complaints. Complaints about torture should be dealt with immediately and should be investigated by an independent authority with no relation to that which is investigating or prosecuting the case against the alleged victim. Furthermore, the forensic medical services should be under judicial or other independent authority, not under the same governmental authority as the police and the penitentiary system. Public forensic medical services should not have a monopoly of expert forensic evidence for judicial purposes. In that context, countries should be guided by the Principles on the Effective Investigation and Documentation of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment as a useful tool in the effort to combat torture;[2]

(k) Training courses and training manuals should be provided for police and security personnel and, when requested, assistance should be provided by the United Nations programme of advisory services and technical assistance. Security and law enforcement personnel should be instructed on the Standard Minimum Rules for the Treatment of Prisoners,[3] the Code of Conduct for Law Enforcement Officials,[4] the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials,[5] and the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, and these instruments should be translated into the relevant national languages. In the course of training, particular stress should be placed upon the principle that the prohibition of torture is absolute and non-derogable and that there exists a duty to disobey orders from a superior to commit torture. Governments should scrupulously translate into national guarantees the international standards they have approved and should familiarize law enforcement personnel with the rules they are expected to apply;

(l) Health-sector personnel should be instructed on the Principles of Medical Ethics relevant to the Role of Health Personnel, Particularly Physicians, in the Protection of Detainees and Prisoners against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.[6] Governments and professional medical associations should take strict measures against medical personnel that play a role, direct or indirect, in torture. Such prohibition should extend to such practices as examining detainees to determine their "fitness for interrogation" and procedures involving ill-treatment or torture, as well as providing medical treatment to ill-treated detainees so as to enable them to withstand further abuse. In other cases, the withholding of appropriate medical treatment by medical personnel should be subject to sanction.

Notes

[1] General Assembly resolution 43/173, annex.

[2] See General Assembly resolution 55/89, annex.

[3] Adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Geneva, 1955.

[4] General Assembly resolution 34/169, annex.

[5] Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, 1990.

[6] General Assembly resolution 37/194, annex.

Annex II

LETTER OF RESIGNATION DATED 15 OCTOBER 2001 FROM THE SPECIAL RAPPORTEUR ADDRESSED TO THE CHAIR OF THE COMMISSION ON HUMAN RIGHTS

15 October 2001

Dear Mr. Despouy,

With regret, I submit to you my resignation as Special Rapporteur of the Commission on Human Rights on the question of torture, to take effect as from 12 November 2001.

As I indicated to you at the time of the fifty-seventh session of the Commission, I had some doubts about whether to seek a final term as Special Rapporteur, given the extra work brought by my election to the Human Rights Committee. I accepted the mandate once more nevertheless, in the hope that this dual United Nations responsibility could be reconciled with my full-time academic post as Professor of Law at the University of Essex. Now, as my third session of the Human Rights Committee begins, it is clear that I cannot responsibly sustain such a workload, hence this resignation today, to be effective four weeks from now so that my successor may be appointed without a break in the work of the mandate.

It was you, of course, who, as head of your Government's delegation to the forty-first session of the Commission, introduced the draft that became resolution 1985/33 by which the mandate was established - just one of many demonstrations over the decades of your personal commitment to the worldwide eradication of torture. It is appropriate, therefore, that it now falls to you to appoint the third holder of this mandate, and I know that you will ensure that the work is continued by someone who will not only carry it out with authority and skill, but will also share our determination to rid the world of the scourge of torture.

I take this opportunity to express my deepest appreciation for the competence, professionalism and dedication of the Human Rights Officers who have carried the day-to-day burden of servicing the mandate, as well as for the support of their supervisors and the contribution of my research assistants in alleviating the impossible workload of the officers. I am also indebted to the leadership of the Office of the High Commissioner for Human Rights, especially the present High Commissioner and Deputy High Commissioner, for their constant political support of the mandate and its concerns.

I must, however, remind the Commission, through you, that the mandate would be much more effective were the Office able to grant resources to permit maximum activity in responding to the enormous amount of information it receives or could obtain. Regrettably, the organization has still to demonstrate the political will and priority to translate its concerns about torture and other grave human rights problems into more effective action. I hope that the work of my successor will benefit from an allocation of resources commensurate with the scope of the problem.

Yours sincerely,

(Signed) Sir Nigel Rodley

Annex III

STATEMENT BY THE SPECIAL RAPPORTEUR TO THE THIRD COMMITTEE OF THE GENERAL ASSEMBLY DELIVERED ON 8 NOVEMBER 2000

It is a great honour to present my third interim report to the General Assembly. As in previous years, I have presented in this report a number of issues of special concern to the mandate of the Special Rapporteur on torture, in particular overall trends and recent developments in the United Nations human rights mechanisms of relevance to my mandate. I have focused on five issues this year.

While the present report does not address the matter, I did, in my report to the fifty-seventh session of the Commission on Human Rights (E/CN.4/2001/66) and in view of the then forthcoming World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, address the question of racism and related intolerance which I believe is all too relevant to issues falling within my mandate.

Intimidation as a form of torture

I note with appreciation the reference to intimidation in Commission on Human Rights resolution 2001/62, entitled "Torture and other cruel, inhuman or degrading treatment or punishment". In paragraph 2, the Commission "condemns all forms of torture, *including through intimidation*, as described in article 1 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment" (emphasis added).

A number of decisions by human rights monitoring mechanisms have referred to the notion of mental pain or suffering, including suffering through intimidation and threats, as a violation of the prohibition of torture and other forms of ill-treatment. Similarly, international humanitarian law prohibits at any time and any place whatsoever any threats to commit violence to the life, health and physical or mental well-being of persons.

It is my opinion that serious and credible threats, including death threats, to the physical integrity of the victim or a third person can amount to cruel, inhuman or degrading treatment or even torture, especially when the victim remains in the hands of law enforcement officials. The problems posed in respect of securing evidence of non-physical forms of torture make it difficult to confirm allegations of these forms of torture.

Enforced or involuntary disappearances as a form of torture

The jurisprudence of several human rights monitoring mechanisms has referred to the prohibition of torture while dealing with acts of enforced or involuntary disappearances. In particular, I would note that the Working Group on Enforced or Involuntary Disappearances of the Commission on Human Rights stated that "the very fact of being detained as a disappeared person, isolated from one's family for a long period, is certainly a violation of the right to humane conditions of detention and has been represented to the Group as torture" (see E/CN.4/1983/14, para. 131).

While reaffirming that enforced disappearances are unlawful under international law and cause much anguish, whatever their duration, I believe that to make someone disappear is a form of prohibited torture or ill-treatment, clearly as regards the relatives of the disappeared person and arguably in respect of the disappeared person or him/herself. I further believe that prolonged incommunicado detention in a secret place may amount to torture as described in article 1 of the Convention against Torture. The suffering endured by the disappeared persons, who are isolated from the outside world and denied any recourse to the protection of the law, and by their relatives, doubtless increases as time goes by.

Nevertheless, it is my opinion that the Special Rapporteur on torture should continue to refrain from dealing with cases of disappearances so as to avoid duplication with the Working Group on Enforced or Involuntary Disappearances. I hope that these two mechanisms will be sending joint communications, especially when fears have been expressed that the persons concerned may be at risk of torture and further disappearance in view of the incommunicado nature of their detention in a secret place.

Torture and discrimination against sexual minorities

For some years, I have received information regarding victims of torture and other forms of ill-treatment belonging to sexual minorities, who are said to have been subjected to violence of a sexual nature, such as rape or sexual assault, and other abuse relating to their real or perceived sexual orientation or gender identity.

I believe that discrimination on grounds of sexual orientation or gender identity may contribute to the process of the dehumanization of the victim, which is often a necessary condition for torture and ill-treatment to take place. Furthermore, discriminatory attitudes towards members of sexual minorities can mean that they are perceived as less credible by law enforcement agencies or not fully entitled to an equal standard of protection, including protection against violence carried out by non-State agents. Members of sexual minorities, when arrested for other alleged offences or when lodging a complaint of harassment by third parties, have reportedly been subjected to further victimization by the police, including verbal, physical and sexual assault, including rape. Silencing through shame or the threat by law enforcement officials to publicly disclose the birth sex of the victim or his or her sexual orientation (to family members, among others) may keep a considerable number of victims from reporting abuses.

Torture and impunity

I have noted in the past that the single most important factor in the proliferation and continuation of torture is the persistence of impunity, be it of a de jure or de facto nature. Causes of impunity of a de jure nature encompass measures relieving perpetrators of torture of legal liability, inter alia by providing an unrealistically short period of prescription, adopting acts of indemnity, or by granting amnesties to perpetrators of grave violations of human rights. It is with regard to the granting of amnesties that I have reviewed the recent developments in international law on the question of the compatibility of amnesties with States' international obligations to combat torture.

I would recall that the Vienna Declaration and Programme of Action stipulates that "States should abrogate legislation leading to impunity for those responsible for grave violations of human rights such as torture and prosecute such violations, thereby providing a firm basis for the rule of law."

I would stress the duty of States to bring to justice perpetrators of torture as an integral part of the victims' right to reparation. In my report, I have drawn the attention of the General Assembly to the jurisprudence of various international and regional human rights monitoring bodies on that issue. In the light of this jurisprudence suggesting that the prohibition of amnesties leading to impunity for serious human rights violations has become a rule of customary international law, I express my opposition to the passing, application and non-revocation of amnesty laws (including laws in the name of national reconciliation, the consolidation of democracy and peace, and respect for human rights), which prevent torturers from being brought to justice and hence contribute to a culture of impunity. As before, I would call on States to refrain from granting or acquiescing in impunity at the national level, inter alia by the granting of amnesties, such impunity itself constituting a violation of international law.

Prevention and transparency

One of the main factors constituting a condition of impunity de facto is the prevalence of the opportunity to commit the crime of torture in the first place. In that respect, one of my main recommendations would be external supervision of all places of detention by independent officials, such as judges, prosecutors, ombudsmen and national or human rights commissions, as well as by civil society. I would also recommend the presence of the person's lawyer at interrogation sessions. I would support monitoring by independent monitoring institutions, such as the International Committee of the Red Cross and the Committee on the Prevention of Torture under the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, and the mechanism contemplated by the draft optional protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, should it be adopted with at least the powers enjoyed by the two mechanisms I just referred to.

I am convinced that there needs to be a radical transformation of assumptions in international society about the nature of deprivation of liberty. The basic paradigm, taken for granted over at least a century, is that prisons, police stations and the like are closed and secret places, with activities inside hidden from public view. The international standards referred to are conceived of as often unwelcome exceptions to the general norm of opacity, merely the occasional ray of light piercing the pervasive darkness. What is needed is to replace the paradigm of opacity by one of transparency. The assumption should be one of open access to all places of deprivation of liberty. Of course, there will have to be regulations to safeguard the security of the institution and individuals within it, and measures to safeguard their privacy and dignity. But those regulations and measures will be the exception, having to be justified as such; the rule will be openness.

Finally, I would encourage States to reflect upon the revised recommendations that I have included in the last chapter of my report as a useful tool in efforts to combat torture.

By way of update in respect of possible missions, I wish to inform the General Assembly of the following:

I regret that the Government of China did not confirm by the end of July, as discussed during a meeting with a delegation from the Permanent Mission of China to the United Nations Office at Geneva in June, the possibility of a visit last September. I reiterated that I was happy to accept the February 1999 invitation by the Government of China to conduct a friendly visit to China, on the basis of modalities that would ensure that the visit would provide information capable of permitting me to make recommendations responding to the factual, institutional and legal obstacles to guaranteeing full respect for the prohibition of torture and other ill-treatment within my mandate. I consider that it is now up to the Government of China to inform the Special Rapporteur if and when it is willing to permit such a visit to take place.

Regarding my joint request with the Special Rapporteur on violence against women, its causes and consequences, to visit the Russian Federation with respect to the Republic of Chechnya, I also regret that the Government did not agree to a joint mission this year.

Regarding my request to visit Israel with respect to the occupied Palestinian territories, I have reiterated my request to visit the country on the basis of the standard terms of reference for fact-finding missions. I have also inquired whether the non-cooperation of the Government on the basis of Commission resolution S-5/1 of 19 October 2000 would preclude my access to the country and to all places of detention and interrogation that would be chosen prior to and during the mission and confidential and unsupervised interviews with detained persons chosen by myself, as well as whether I would be able to count on the cooperation of law enforcement officials at all levels. To date, I have not received any response.

My requests to visit India (1993), Indonesia (1993), Egypt (1996), Algeria (1997), Bahrain (1998), Tunisia (1998), Uzbekistan (2000) and Nepal (2001) remain outstanding. Since the last session of the Commission on Human Rights, I have also sought an invitation to Georgia.

I think that most of you will know by now that on 15 October I tendered my resignation to the Chair of the fifty-seventh session of the Commission on Human Rights, to take effect on 12 November (next Monday). This was after long reflection and the decision weighed heavily with me. But I was forced to conclude that I could not responsibly continue to shoulder the burden of a full-time teaching post, the work created by my recent membership of the Human Rights Committee and the obligations of the Special Rapporteur mandate.

While, after eight and half years' efforts on the mandate, I should have wished that the scourge of torture in the world were far less prevalent, I am convinced that the mandate has made and will continue to make an important contribution to the inhibition and eventual eradication of torture. In the end, solutions can only be found at the national level. The United Nations can, does and must continue to support and encourage these (including by substantially increasing the resources for its work). The ultimate responsibility, nevertheless, remains on its Member States represented today by you Ladies and Gentlemen in this Committee Room.

While time does not allow me to address in detail the relevance of the 11 September cataclysm to my mandate, I wish to state the following. However frustrating may be the search for those behind the abominable acts of terrorism and for evidence that would bring them to justice, I am convinced that any temptation to resort to torture or similar ill-treatment or to send suspects to countries where they would face such treatment must be firmly resisted. Not only would that be a violation of an absolute and peremptory rule of international law, it would be also responding to a crime against humanity with a further crime under international law. Moreover, it would be signalling to the terrorists that the values espoused by the international community are hollow and no more valid than the travesties of principle defended by the terrorists.

On that note, I present my interim report to the General Assembly.